

INTERNAL REVENUE SERVICE

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[REDACTED]

September 5, 2001

Dear [REDACTED]:

This replies to your August 14, 2001, letter wherein you request information regarding the availability of credits and refunds for federal excise tax imposed on fuel used in your company's ambulances. In a recent telephone discussion with a member of this office you indicated that you use diesel fuel in those vehicles. Since you also stated that you have no interest in obtaining a ruling in this matter, we hope the following information will be helpful.

Section 4081(a)(1)(A) of the Internal Revenue Code imposes a tax on certain removals, entries, or sales of taxable fuels (the definition of which includes diesel fuel). When tax is not imposed under that code section, a backup tax is imposed under § 4041(a)(1)(A) on diesel fuel sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or used by any person as fuel in a diesel-powered highway vehicle.

Under § 6427(l)(1)(A), a credit or refund of tax imposed under § 4081 or § 4041 is available to the ultimate purchaser of diesel fuel used by any person in a "nontaxable use." A nontaxable use includes an off-highway business use. Section § 6421(e)(2)(A)(i) defines an off-highway business use as any use by a person in a trade or business of the person or in an activity of the person described in § 212 (relating to production of income) otherwise than as a fuel in a highway vehicle that (at the time of the use) is registered, or is required to be registered, for highway use under the laws of any state or foreign country.

Section 48.6421-4(c) of the Manufacturers and Retailers Excise Tax Regulations provides that the term highway vehicle has the same meaning assigned to the term under § 48.4061(a)-1(d). That regulation defines a highway vehicle as any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of

transporting a load over public highways, whether or not designed to perform other functions, but does not include a vehicle described in § 48.4061(a)-1(d)(2). In general, the exceptions to the definition of a highway vehicle provided under that code section (which includes an exception for certain specially designed mobile machinery for nontransportation functions) are applicable to trucks and trailers, but not to ambulances. Therefore, a fuel tax credit or refund is not available based on the use of the fuel in an ambulance.

If you have any questions about this, please contact the person whose name appears above.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Richard A. Kocak
Chief, Branch 8